evidence. There will be liberty to apply after such settlement or failing such settlement after the necessary attempts to reach a settlement.

Order accordingly.

Solicitors: *N. Sharma; S. N. Leow.*

PUBLIC PROSECUTOR v. HAMBALI & ANOR.

[A.Cr.J. (Chang Min Tat J.) August 2, 1968]
[Ipoh — Criminal Appeal No. 21 of 1968]

Evidence — Fact specially within the knowledge of person — Charge of using vehicle without third party insurance — Production of insurance policy — Evidence Ordinance, 1950, s. 106.

Evidence — Admissibility — Police investigation — Criminal Procedure Code (Cap. 6), s. 113.

In this case the learned magistrate acquitted the respondents on a charge of using a motor cycle without a valid policy of insurance against third party risks, as he found that there was no proof that the police had demanded for the policy of insurance.

Held: the onus of proving that there was a policy was on the accused in this case and there was no necessity for the prosecution to give *prima facie* evidence of the non-existence of the policy.

Cases referred to:—

(1) *R.* v. *Oliver* [1943] 2 All E.R. 800.

(2) *Williams* v. *The East India Company* (1802), 3 East 192; 102 E.R. 200.

(3) *R.* v. *Turner* (1816), 5 M. & S. 206; 105 E.R. 211.

(4) *Williams* v. *Russell* (1933), 149 L.T. 190, 191.

(5) *John* v. *Humpreys* [1955] 1 All E.R. 793, 794.

(6) *Khoo Teck Yam* v. *Public Prosecutor* [1955] M.L.J. 112.

MAGISTRATE'S CRIMINAL APPEAL.

Eusoff bin Chin (Deputy Public Prosecutor) for the appellant.

S. A. Lingam for the respondent.

Cur. Adv. Vult.

Chang Min Tat J.: The 1st respondent was charged with two offences, the first for riding a motor-cycle without being the holder of a driving licence and the second with using the motor-cycle without a valid policy of insurance against third party risks. In connection with these charges, the 2nd respondent was charged as owner of the motor-cycle also with two offences, the first with permitting the 1st respondent to use it without a driving licence and the second without a valid policy of insurance.

At the conclusion of the case for the prosecution, the learned magistrate called for the 1st respondent to enter on his defence to the first charge but acquitted him on the second charge without his defence being called and he also acquitted the 2nd respondent on both charges similarly without his defence. At the conclusion of the trial, the 1st respondent was convicted on the first charge and fined $50 or in default, 1 week's imprisonment.

Against the orders of acquittal and discharge, the Public Prosecutor now appeals.

In the court below, the prosecution had adduced evidence that on specific instructions, PW..1 (police constable 18919 Othman bin Abdul Rahman) went in search of the rider of the motor-cycle and found it travelling on Changkat Jong Road in Teluk Anson near the Lower Perak Club junction. He ordered it to stop but the rider refused. P.W.1 then followed the motor-cycle and found it stopped at a junction. He first demanded from the rider his driving licence. The rider merely produced his identity card. His name and identity card number were recorded in the police constable's diary. He was respondent No. 1. The pillion-rider did not produce his identity card but gave his name as Hassan bin Haji Sulaiman and his address as 367 Jalan Pasir Bedamar. He was identified as the respondent No. 2. In cross-examination P.W.1 denied that respondent No. 2 was the rider and respondent No. 1 the pillion-rider.

P.W.2, police constable 31252 Yatim bin Lazim, the only other prosecution witness, produced a memo from the Registrar and Inspector of Motor Vehicles certifying that the owner of the moor-cycle was one Hassan bin Sulaiman alias Haji Sulaiman of No. 367A Pasir Bedamar Road, Teluk Anson with NRIC. No. 2101305. This Hassan was in possession of a valid motor-vehicle licence.

The learned magistrate dealt with the second charge in each case in this joint trial in the following manner. He said the prosecution relied on the provisions of section 106 of the Evidence Ordinance but held that before they could be invoked "there must be sufficient evidence leading towards the facts that are within the knowledge of the defendant", and he went on to hold that in the absence of any proof that the police had demanded for the policy of insurance, the charges could not stand.

With respect to him, it appears to me in the first place that the learned magistrate had forgotten the provisions in section 113 Criminal Procedure Code prohibiting the prosecution from adducing in evidence what was said to the police by the accused in the course of police investigation.

In the second, he is wrong in his interpretation of section 106 of the Evidence Ordinance. While this section does not, as it is abundantly clear, cast any burden on an accused person to prove that no crime had been committed by

proving facts lying specially within his knowledge and is not intended to relieve the prosecution of its burden of proof, it is none the less clear (and here I quote from *Sarkar* on Evidence 10th Edition p. 846-847) :—

"Designed to meet certain exceptional cases in which it would be impossible or at any rate disproprortionately difficult for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience."

So in proceedings by the prosecution where the act charged is lawful if the accused had a licence, but otherwise unlawful, the prosecution has not to establish the absence of such licence. This proposition is founded on the authority of *R.* v. *Oliver* [1] in the Court of Criminal Appeal. In that case, the accused was charged, *inter alia*, on several counts with selling sugar, a controlled food, otherwise than under and in accordance with the terms of a licence. Viscount Caldecote L.C.J., in the course of his judgment, cited with approval the following passages (1) of Lord Ellenborough C.J. in *Williams* v. *The East Indiu Company* [2] :—

"That rule of law is, that where any act is required to be done on the one part, so that the party neglecting it would be guilty of a criminal neglect of duty in not having done it, the law presumes the affirmative, and throws the burden of proving the contrary, that is, in such case of proving a negative, on the other side."

(2) of Bayley J. in *R.* v. *Turner* [3] :—

"I have always understood it to be a general rule, that if a negative averment be made by one party, which is peculiarly within the knowledge of the other, the party within whose knowledge it lies, and who asserts the affirmative is to prove it, and not he who avers the negative."

and (3) of Talbot J. in *Williams* v. *Russell* [4] a case of driving without a policy of insurance:—

"On the principle laid down in *R.* v. *Turner* and numerous other cases, where it is an offence to do an act without lawful authority, the person who sets up lawful authority must prove it, and the prosecution need not prove the absence of lawful authority. I think the onus of the negative averment in this case was on the accused to prove the possession of the policy required by the statute."

Viscount Caldecote L.C.J. concurred with the opinion of the Court of Criminal Appeal that the prosecution was under no necessity of giving *prima facie* evidence of the non-existence of a licence.

For myself, I would, if I may do so without disrespect, add, without the necessity of adducing evidence of a demand for the production of the licence. If evidence of such demand and the reply to it which is properly adducible in England, is not necessary there, then it would not be necessary in this country which in any event prohibits evidence of any statement made by an accused person in the course of police investigation: lest there be any doubt as to the correctness of this, I would point to the case of *John* v. *Humphreys*, [5] a case, in point, of driving without a licence, where Lord Goddard C.J., following the decision in *R.* v. *Oliver, supra,* held that:—

"When an Act of Parliament provides that a person shall not do a certain thing unless he has a licence, the onus is always on the defendant to prove that he has a licence because it is a fact peculiarly within his own knowledge."

As was said there, all that the defendant had to do was to send his licence to the police or to the court and the prosecution would not have been initiated or if initiated, would have been dropped.

The doubt of the learned magistrate on the application of section 106 of the Evidence Ordinance would appear to have been shared, if only momentarily, by Ormerod J. (as he then was) in the same case but the learned judge was converted by *R.* v. *Oliver, supra,* though it must be said that there is no evidence that this decision of the Court of Criminal Appeal was ever brought to the notice of the learned magistrate.

Again, lest there should be any feeling of harshness in the application of the law, let us remind ourselves of what Lord Goddard C.J. said in the same case:—

"In theory, I suppose, a police officer who sees a car being driven in the street can always summon the driver of the car and leave it to the driver of the car to prove that he had a licence. It is not contemplated for a moment, however, that police officers would act in such a way; if they did, not only would they have costs given against them, but I should think that very severe steps would be taken."

Within our shores, there is the case of *Khoo Teck Yam* v. *Public Prosecutor*, [6] a decision of the High Court which is of course binding on the magistrate. There Buhagiar J. had said in words that admit of no misunderstanding that the burden of proving the existence of a policy was in his opinion on the appellant by virtue of section 106 of the Evidence Ordinance.

The appeal against the acquittal of the 1st respondent on the second charge is therefore allowed and the case is remitted to the magistrate for him to call on the defence.

When he came to deal with the 2nd respondent on the first charge, the learned magistrate held that the prosecution had not proved that he was the owner of the motor-cycle in question. The prosecution's evidence in this connection was a certificate (Exh. P.2) under section 143(4) of the Road Traffic Ordinance 1958 that the registered owner was one Hassan bin Sulaiman alias Haji Sulaiman (NRIC. No. 2101305) of 367A Pasir Bedamar Road, Teluk Anson, Perak. Now the name of the registered owner was the name of the 2nd respondent but in the evidence of the prosecution the address was 367 and not 367A Pasir Bedamar Road. The learned magistrate felt some doubts as to the identification of the 2nd

respondent as the owner. Such doubts could have been resolved by adducing evidence of the number of the NRIC held by the 2nd respondent and should have, of course, been anticipated by the prosecution. This was not done and no proof was adduced. It is not necessary to decide whether the learned magistrate was correct in entertaining such doubts. It is sufficient that this certificate (Exh. P.2) while admissible and where properly admitted is *prima facie* proof of the facts certified therein, had not on the record been proved to have been properly admitted. There is no proof at all that the provisions of the proviso to sub-section (6) of section 143 of the Road Traffic Ordinance 1958 for the service of the certificate on the respondent not less than 10 clear days before the commencement of the trial had been complied with.

The appeal against the acquittal of the 2nd respondent on the first and second charges therefore fails.

Appeal against acquittal of 1st respondent on 2nd charge, allowed;

Appeal against acquittal of 2nd respondent on 1st and 2nd charges dismissed.

WONG KENG SAM & ORS. v. PRITAM SINGH BRAR

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Ambrose J.) August 10. 1968]

[Singapore — Federal Court Civil Appeal No. Y51 of 1967]

Constitutional Law — Public service — Committee of inquiry — When ceases to exist — Whether Public Service Commission entitled to require committee to hear further evidence — Public Service (Disciplinary Proceedings) (Procedure) Rules, 1964 — Whether Rules mandatory or directory — Constitution of Singapore, arts. 75(1) & 80(2) — Constitution of Malaysia, art. 135 (2).

Evidence — Further evidence — Power of inquiry committee to consider.

The appellants in this case were members of a committee of inquiry appointed by the Public Service Commission under rule 4 of the Public Service (Disciplinary Proceedings) (Procedure) Rules, 1964, to inquire into certain charges preferred against the respondent, who was an Assistant Superintendent of Police in the Singapore Police Force. The committee inquired into the charges and reported to the Public Service Commission. Subsequently the Public Service Commission by letter addressed to the 1st appellant as chairman of the committee directed the committee to establish the full facts of the case and in particular to call the Commandant of the Police Training School. Consequently the committee informed the respondent that it would meet to hear further evidence. The respondent through his solicitor objected to such further proceedings and took out proceedings against the appellants for a declaration that the appellants had ceased to hold office as members of the committee of inquiry and that the decision of the appellants to hear further evidence was illegal, void and inoperative. The respondent also sought an injunction to restrain the appellants from hearing further evidence. An application was made for an interlocutory injunction to restrain the appellants from hearing the further evidence. Chua J. heard the application and granted the interlocutory injunction. The appellants appealed.

Held, allowing the appeal: (1) although the Public Service (Disciplinary Proceedings) (Procedure) Rules, 1964, are statutory rules, they are except for such rules as are for the purpose of carrying out the object of article 135(2) of the Constitution of Malaysia, procedural rules which are not mandatory but merely directory, and therefore any breach or non-compliance with any such purely procedural rule or sub-rule does not give a person aggrieved a legal right to redress in a court of law;

(2) as there was no provision in the Rules to say when a committee of inquiry shall cease to exist, the Public Service Commission was entitled to require the committee to consider further evidence;

(3) in this case it would appear that if the action had proceeded to trial, the respondent would *prima facie* fail to obtain the two declarations and consequential injunction sought, and therefore the respondent was not entitled to obtain the interlocutory injunction.

Case referred to:—

(1) *State of U.P.* v. *Babu Ram* A.I.R. 1961 S.C. 751.

FEDERAL COURT.

Ho Thian Cheh (Senior State Counsel) for the appellants.

S. K. Lee for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is an appeal from the decision of Chua J. in chambers in an application for an interlocutory injunction. The relevant facts are these. The plaintiff is a public officer holding the rank of Assistant Superintendent of Police in the Police Service in Singapore. The defendants are members of a committee of inquiry (hereafter referred to as "the said committee") appointed by the Public Service Commission under rule 4 of the Public Service (Disciplinary Proceedings) (Procedure) Rules, 1964 to inquire into certain charges preferred against the plaintiff.

The said committee inquired into the charges on various dates between the 1st of February and the 16th of February 1967.

On the 13th June 1967 the Public Service Commission addressed a letter to the 1st defendant as chairman of the said committee, the relevant portion of which reads as follows:—

"The commission has directed that the full facts of the case be established and that in particular the committee call and hear Mr. Ong Kim Boon Commandant of the Police Training School."

In pursuance of that direction the said committee directed the Permanent Secretary of the Ministry of Interior and Defence to inform